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Paper No. 12
BAC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Altavest Worldwide Trading, Inc.

Serial No. 75/342,976

Curtis L. Harrington of Curtis L. Harrington & Associates
for Altavest Worldwide Trading, Inc.

Kelly F. Boulton, Trademark Examining Attorney, Law Office
102 (Thomas Shaw, Managing Attorney).

Before Walters, Chapman and Holtzman, Administrative
Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

Altavest Worldwide Trading, Inc. has filed an
application to register on the Principal Register the mark
PAPERTRADER for the following goods, as amended: "computer
software used for computational data base manipulation, for
simulating transactions and not for actual performance of
trading and not related to commercial paper" in
International Class 9.¹

¹ Application Serial No. 75/342,976, filed August 18, 1997, based
on applicant's assertion of a bona fide intention to use the mark
in commerce.

Citing Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), the Examining Attorney has finally refused registration on the ground that applicant's mark, when used on its goods, is merely descriptive thereof.

Applicant has appealed, and both applicant and the Examining Attorney have filed briefs. Applicant did not request an oral hearing.

As evidence in support of the refusal to register, the Examining Attorney relies upon the dictionary definitions from The American Heritage Dictionary (1992) of the words "paper" defined as "commercial documents that represent value and can be transferred from owner to owner; negotiable instruments considered as a group..."; and "trader" defined as "one that trades; a dealer: a gold trader; a trader in bonds." The Examining Attorney also relies upon several excerpted stories from the Nexis database, some of which show "paper trader(s)" referring to those who actually trade in futures, commercial paper, and the like; and other Nexis stories which show the term referring to simulated or mock trading, such as that in applicant's identification of goods. Examples of both references follow (emphasis added):

(1) Headline: Trust your gut when you finally invest in an IPO
...Ms. Rosanoff advises new investors to practice with **paper traders** to build up their confidence while validating their intuitive 'buy' feelings. Then they can recognize the urgency of timing, and act on that recognition by calling their broker (sic - to) place the order...., "The Business Journal," January 14, 2000;

(2) Headline: Shell Blast Rocks Olefin's Markets Plans to Enter Paper Market
...largest natural gas traders, and we're getting into the retail power market, so this is a logical extension. Even the other **paper traders** are pleased that we are going to be getting in, because what you really need to have in a paper market is volume...., "Chemical Week," July 2-9, 1997;

(3) Headline: Credit Markets: Short-term Borrowing Up Sharply
...recent sharp rise has not led to a widening in interest rate differentials between commercial paper and other short-term market instruments. 'When you look at the good names, things look pretty much normal,' one **commercial paper trader** said late last week, "The New York Times," March 19, 1990; and

(4) Headline: Fuld's Gold
...One of the few bright spots at Lehman in those dark days was the fixed-income division, run by Fuld, who had joined the firm in 1969 as a **commercial paper trader**...., "Institutional Investor," July 1998.

Additional examples of descriptive uses of the terms "paper trader," "paper trading," and "paper trades" were

submitted by the Examining Attorney in the form of pages downloaded from three websites, including applicant's website, as well as two third-party websites. The following are quotes from applicant's website (emphasis sometimes in original and sometimes added):

(1) **Paper Trading**, Introduction to **Paper Trading**, ALTAVEST **Paper Trading** Log..., Charts & Quotes
...If any of these questions apply to you, the solution is simple and available to you through ALTAVEST! It's called **Paper Trading**, a method which allows you the luxury of learning about the markets without having to invest a penny!...**Paper trading** is the simple process of 'executing' mock trades and tracking those trades as if you were in the market with real money....Of course, as the phrase goes, there is no substitute for the real thing. It is important to remember that **paper trading** is a process for learning, and it does not totally reflect real-world trading conditions....We recommend that you start your **paper trading** account with the same amount of money that you intend to commit (sic - to) the markets. Use the ALTAVEST **Paper Trading** Log (Get the Adobe Acrobat Reader) to keep track of your **paper trades**....
altavest.com, page 1 of 1, 8-26-99;

(2) ALTAVEST: Your full-service futures & options brokerage, Introducing the much anticipated **PaperTrader**™ Online, Track your real and mock commodity futures and options trades using the **PaperTrader** Online system.
altavest.com, pages 1 and 2 of 2, 5-12-00; and

(3) **Paper Trading** the Commodity Markets, **Paper trading** is the simple process of "executing" mock futures trades and tracking those trades as if you were in the markets with real money.
altavest.com/papertrading, page 1 of 2,
5-12-00.

The following are quotes from the third-party websites (emphasis added), the first an analogous system to that of applicant's but for tracking stocks, and the latter a company apparently involved in actual paper trading:

(1) Five Ways to Buy Stock: 1. **Paper Trading**: This involves following a stock in the paper without actually ever buying the stock. It's a good way to get some experience picking a company and tracking a stock before risking your hard-earned cash.

When you begin to make **paper trades**, you won't actually use any real money to invest in the market. Instead you use fake money, hence the term **paper trading**. As a **paper trader**, you won't go to a broker or open an account, instead you may watch stock reports on TV or read newspaper articles on investing and learn to follow certain sectors like technology or pharmaceuticals.
Investit at
zacks.com/mag/investit_stock (page 1 of 4, 7-24-00); and

(2) **Paper Trading** Getting Started
...As a brokerage, we have received many calls in the past regarding **paper trading**.... That's the reason we came

up with this '**Paper Trader's** Survival
Kit.'...
Great Pacific Trading Company
gptc.com (page 1 of 2, 7-24-00); and

The test for determining whether a mark is merely descriptive under Section 2(e)(1) of the Trademark Act is whether the term immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978); *In re Venture Associates*, 226 USPQ 285 (TTAB 1985); and *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979).

Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the term or phrase is being or will be used on or in connection with those goods or services, and the impact that it is likely to make on the average purchaser of such goods or services. See *In re Consolidated Cigar Co.*, 35 USPQ2d 1290 (TTAB 1995); and *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991). The question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether

someone who knows what the goods or services are will understand the mark to convey information about them. See *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American Greetings Corp.*, 226 USPQ 365 (TTAB 1985).

We agree with the Examining Attorney that the applied-for mark PAPERTRADER immediately and directly conveys information about both (i) a significant function or purpose of applicant's goods (computer software for computational data base manipulation for simulating transactions, and not for actual performance of trading and not related to commercial paper), which is to allow the customer to simulate trading through mock or "paper trades," and (ii) the intended users of the goods, i.e., people who seek to learn about futures and options trading by engaging in mock "paper trading." A significant function of applicant's goods, as identified, is to carry out simulated transactions or "paper trades" for the intended users of the software, the "paper traders," who seek to learn the business before investing real money. That is, applicant's mark PAPERTRADER immediately conveys to potential customers what applicant's computer software is designed to do, and the mark also describes software for those who in fact engage in "paper trading."

Specifically, the dictionary definition of "trader" establishes that the term refers to one who trades, which is precisely what applicant's computer software allows people to do. Further, the Nexis and website evidence establishes that the terms "paper trading," "paper trades," and "paper trader" are associated with a method of executing mock trade transactions without investing; and applicant's own website shows that applicant's computer software is or will be a simulated trading program, whereby participants trade commodity futures and options through fictitious transactions without yet investing money. Even though applicant's computer software does not involve actual trades of commercial paper², the purchasing public would clearly understand that applicant's software, for the goods as identified, is intended to allow simulated or "paper trades." See *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Omaha National Corporation*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); *In re Intelligent Instrumentation Inc.*, 40 USPQ2d 1792 (TTAB

² The fact the there are references in the Nexis evidence showing that "paper trader" may also refer to a person carrying out actual trades of commercial paper does not negate the distinct meaning of the term "paper trader" (or "papertrader") in the context of applicant's goods, relating to simulated or mock paper trades. Merely merging the two words "paper" and "trader" into a single word "papertrader" does not change the commercial impression created thereby.

1996); and In re Time Solutions, Inc., 33 USPQ2d 1156 (TTAB 1994).

In addition, when the mark PAPERTRADER is viewed in the context of applicant's goods, the purchasing public would immediately, without imagination or conjecture, understand not only the function or purpose of the goods, but also, that the person who carries out such simulated or paper trades is a "paper trader" ("papertrader"). See Hunter Publishing Co. v. Caulfield Publishing Ltd., 1 USPQ2d 1996 (TTAB 1986). See also, In re Camel Manufacturing Company, Inc., 222 USPQ 1031 (TTAB 1984), and cases cited (and distinguished) therein.

Suffice it to say that, based on the record before us, applicant's arguments to the contrary do not persuade us of a different result herein.

Finally, even if applicant is the first (and/or only) entity to use the term PAPERTRADER in relation to computer software for computational data base manipulation for simulating transactions (but not for actual trading and not related to commercial paper), such is not dispositive where, as here, the term unquestionably projects a merely descriptive connotation. See In re Tekdyne Inc., 33 USPQ2d 1949, 1953 (TTAB 1994), and cases cited therein. We believe competitors would have a competitive need to use

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this term. See 2 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §11:18 (4th ed. 2000).

Decision: The refusal to register under Section 2(e)(1) is affirmed.